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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/788,498	02/26/2004	David Mui	8336/ETCH/SILICON	7439
55649	7590	09/11/2006	EXAMINER	
MOSER IP LAW GROUP / APPLIED MATERIALS, INC.			PUNNOOSE, ROY M	
1040 BROAD STREET			ART UNIT	
2ND FLOOR			PAPER NUMBER	
SHREWSBURY, NJ 07702			2877	

DATE MAILED: 09/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	Application No. 10/788,498	Applicant(s) MUI ET AL.	
	Examiner Roy M. Punnoose	Art Unit 2877	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 June 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13, 18 and 19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13, 18 and 19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                                  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____   |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of claims 1-13 and 18-19 in the reply filed on June 29, 2006 is acknowledged.

### ***Interview***

2. The Examiner notified Attorney Alan Taboada (Reg, No.51,359) of certain deficiencies in the drawings, specification and claim(s) on August 28, 2006. However, a response to correct all the deficiencies has not been received, which is the subject of this office action.

### ***Specification***

3. In the "Brief Description of the Drawings" section, the description of Figure 5 is missing. Appropriate correction is required.
4. Figure 4 appears to be graph, similar to Figure 3. However, from the description of Figure 4, it seems that the description does not belong to this application because the reference numbers and the description does not match. Appropriate correction is required.
5. In the specification, description/details of Figure 5 is missing. Appropriate correction is required.

### ***Drawings***

6. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the reference character(s) 500, 508, 510, 512, 514, 516, 518, 520, 530, 532 and 540 not mentioned in the description. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the

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application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- a) In claim 1, it is not clear how measuring a second parameter of step (b) is related to the claimed invention because there is no further reference of step (b) in claim 1 or in any of the other claims. What is the relevance of measuring a second parameter? Appropriate correction is required.
- b) The recitation "a first parameter" in steps (c ) and (d) creates doubt as to whether it is the same "first parameter" of step (a) or if it is a different parameter. Appropriate correction is required.
- c) The limitation "intermittently measuring" has made the claim vague and indefinite because the term intermittent means "not continuous." Therefore, in the true sense, a

“timed calibration” is an intermittent calibration. Also the time interval between two calibrations in an intermittent measurement method could vary from zero to infinity. This ambiguity has made the claim vague and indefinite.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miller (US\_6,281,818 B1).

11. Claim 1 is rejected because:

- A. Miller teaches of a system comprising providing one or more reference signals, determining whether a circuit is within calibration, and if a predetermined value is exceeded, a triggering unit performs a calibration based on the reference signal (see abstract).
- B. Miller does not teach that the method is for controlling calibration timing for a metrology tool for measuring various parameters of a sample under test.
- C. However, in view of Miller’s teaching, it would have been obvious to one of ordinary skill in the art at the time the invention was made to adopt such a system for calibrating a metrology tool because such an auto-calibration method can be implemented in almost any field of endeavor for calibrating a tool to make accurate measurements.

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12. Claims 2-13 and 18-19 are rejected because the examiner takes official notice that in view of Miller's teaching their limitations are commonly known in the art and therefore would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate them into Miller's system for making accurate measurements of a sample under test.

### *Conclusion*


13. Several facts have been relied upon from the personal knowledge of the examiner about which the examiner took Official Notice in this office action. Applicant must seasonably challenge well known statements and statements based on personal knowledge when they are made. In re Selmi, 156 F.2d 96, 70 USPQ 197 (CCPA 1946); In re Fischer, 125 F.2d 725, 52 USPQ 473 (CCPA 1942). See also In re Boon, 439 F.2d 724, 169 USPQ 231 (CCPA 1971) (a challenge to the taking of judicial notice must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying the judicial notice). If applicant does not seasonably traverse the well-known statement during examination, then the object of the well known statement is taken to be admitted prior art. In re Chevenard, 139 F.2d 71, 60 USPQ 239 (CCPA 1943). A seasonable challenge constitutes a demand for evidence made as soon as practicable during prosecution. Thus, applicant is charged with rebutting the well-known statement in the **next reply** after the Office action in which the well known statement was made.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Roy M. Punnoose** whose telephone number is **571-272-2427**. The examiner can normally be reached on 9:00 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Gregory J. Toatley, Jr.** can be reached on **571-272-2800 ext.77**. The fax phone number for the organization where this application or proceeding is assigned is **571-273-8300**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

September 04, 2006

  
**Roy M. Punnoose**  
Patent Examiner  
Art Unit 2877